

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 25 2005

OFFICE OF
MANAGING DIRECTOR

FILE

Ms. Sue Rademacher
Mainstreet Communications, LLC
831 Main Street South
Sauk Center, MN 56378-1646

Re: FY 2004 Regulatory Fees
Fee Control No. 00000RROG-05-007

Dear Ms. Rademacher:

This is in response to your letter dated October 21, 2004 disputing the late payment penalties associated with the fiscal year (FY) 2004 telephone and CATV regulatory fees for DiversiCOM Mainstreet Communications, LLC (Diversicom) and requesting that we rescind those penalties. Our records indicate that we received two separate checks on October 1, 2004 for payment of your regulatory fees of \$1,039.50 for CATV and \$324.82 for telephone, as well as a third check, deposited January 3, 2005, for \$1364.32. We have not yet received your late payment penalties of \$259.87 and \$81.21.

You explain in your request that you made payment for both your FY 2004 telephone and CATV regulatory fees on August 9, 2004, using check number 11734 for \$1,364.32. You state that that check never reached our office. You state that when you received notification from the Commission on September 18, 2004 that your payment had not been received, you contacted your bank and verified that your check was still outstanding. You state that on September 27, 2004, you issued two new checks and sent them certified and return receipt. As documentation, you have submitted photo copies of the following: (1) a check stub for check 11734, showing it was drawn on August 9, 2003 in the amount of \$1,364.32; (2) a Regulatory Worksheet Form 159-W dated August 2, 2004 showing a regulatory fee of \$324.82; (3) a Remittance Advice Form dated July 28, 2004, showing a fee of \$969.50 for call sign MN1041 and \$70.00 for call sign MN1040; (4) a check stub for check 11941, showing it was drawn on September 27, 2004, in the amount of \$324.82 for "Telephone Fee"; (5) an additional copy of the Remittance Advice dated July 28, 2004, date stamped received by FCC/Mellon Bank on October 1, 2004, (6) check 11942 made out to the FCC dated September 27, 2004 for \$1,039.50; (7) an otherwise unidentified post office receipt dated September 27, 2004; (8) another copy of the Regulatory Work Sheet Form 159-W, dated August 2, 2004, showing a regulatory fee of \$324.82, date stamped received by FCC/Mellon Bank on October 1, 2004; and (9) check number 11941, made out to the FCC dated September 27, 2004 for \$324.28, showing a folded envelope stapled to it bearing the letters "MELLO". Following staff inquiry, you supplemented your request with copies of the three cancelled checks: check number

11734 for \$1,364.32, date stamped received by FCC mailroom on August 16, 2004 and deposited by Mellon Bank on January 3, 2005; check number 11942 for \$1,039.50, date stamped received by Mellon Bank on October 1, 2004 and deposited on October 4, 2004; and check number 11941 for \$324.28, date stamped received by Mellon Bank on October 1, 2004 and deposited on October 19, 2004.

The Commission's rules are clear that licensees are required to pay to the Commission an annual regulatory fee in a timely manner. It is the obligation of the licensees responsible for regulatory fee payments to ensure the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. *See* 47 C.F.R. §1.1157; *See Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, 19 FCC Rcd 11,662 (2004) (FY 2004 Fee Order). In addition, the Commission's rules are clear that the regulatory fee payments must be directed to the addresses set forth in the rules. 47 C.F.R. § 1.1159. Those rules set out addresses for post office boxes at the Mellon Bank in Pittsburgh, Pennsylvania.

We find that the facts presented do not support a conclusion that your regulatory fees were timely received at the required address by the Commission by August 19, 2004, the final date of the regulatory fee filing window for FY 2004. The documentation you have provided establishes that your initial check number 11734 for \$1,364.32 must have been mailed to the FCC's headquarters in Washington, D.C. rather than to the required Mellon Bank Pittsburgh address, as it was date stamped received by our headquarters mailroom on August 16, 2004. The delay in our receipt and subsequent deposit of your initial regulatory fee payment likely was the result of your not mailing the payment to the post office box for the Mellon Bank that is established in the rules. *See* 47 C.F.R. §§ 1.1152-1.1156. The subsequently mailed checks were received by the Mellon Bank on October 1, 2004.

As a Commission licensee, Diversicom is charged with the responsibility to familiarize itself with the Commission's rules and requirements. Therefore, Diversicom's lack of familiarity with the Commission's rules and policies governing the timing and mailing address of regulatory fee payments does not mitigate or excuse Diversicom's failure to pay its FY 2004 regulatory fees in a timely manner. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances." *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), *citing Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970). Because Diversicom did not meet its obligation to file its regulatory fees to be timely received by the Commission at the address required by the rules by August 19, 2004, the Communications Act of 1934, as amended, requires the Commission to assess a late payment penalty of 25 percent. *See* 47 U.S.C. §159(c).

Ms. Sue Rademacher

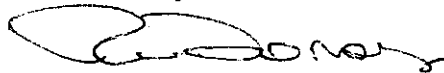
3.

We therefore deny your request for rescission of the penalties for late payment of your fiscal year 2004 regulatory fees. Your penalties in the amounts of \$259.87 for late payment your FY 2004 CATV regulatory fee and \$81.21 for late payment of your FY 2004 telephone regulatory fee are now due. The Commission has billed Diversicom for \$259.87 for the CATV late payment penalty. That amount must be filed together with a copy of Bill No. 0520000004 within 30 days from the date of this letter. The Commission has not yet billed Diversicom for the \$81.21 for the telephone late payment penalty. Therefore, that amount must be filed, together with a Form 159 (copy enclosed), within 30 days from the date of this letter.

Since the Commission received and deposited your FY 2004 regulatory fee payments twice as a consequence of the separate mailings, we will refund \$1,364.32 as soon as practicable.¹

If you have any questions concerning this matter please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

¹ In the future, Diversicom may wish to avail itself of the Commission's Fee Filer online system in order to avoid lost or delayed mail or use of a wrong address. See FY 2004 Fee Order, ¶ 64 (stating Fee Filer is an "easy and convenient way to make fee payments on a timely basis"); Public Notice, *Payment Methods and Procedures For Fiscal Year 2004 Regulatory Fees*, DA 04-2215 (July 21, 2004) (stating easiest and quickest way to pay regulatory fees is through FCC's online payment system, known as Fee Filer, and listing both the web address and a phone number to call for technical assistance); Public Notice, *Fee Filer Available August 1 for 2004 Regulatory Fees*, DA 04-2262 (July 23, 2004).



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October 21, 2004

Federal Communications Commission
Andrew Fishel
Managing Director, OMD
445 12th St. SW, Room C152
Washington, DC 20554

Dear Mr. Fishel:

I am writing in regards to a penalty we received for a late regulatory fee payment. I am disputing the penalty charged to us. I do not feel that this penalty is justifiable to our company. Payment for both Telephone and CATV regulatory fees was made on August 9, 2004 check #11743 for \$1364.32, which never reached your office. I have enclosed documentation of this payment. Payment was due August 19, 2004 and our payment should have made it in plenty of time.

On September 18, 2004 I was notified by mail that our payment was not received at your office. Upon receipt of this notice I contacted the FCC via email (which is how the letter stated to) and then proceeded to contact our bank to verify the check was still outstanding. On September 27, 2004 after finding out that our check was outstanding I issued two new checks submitting each fee separately, and sent them certified and return receipt.

On October 10, 2004, I received a bill for the penalty assessed to us. At this time I contacted the FCC and was asked to fax my proof of payment made in August to your office, and it would be looked at, per Nakia. I would like to be assured that these penalties have been cleared from our account. Please contact me at 320.256.0271.

Sincerely,

A handwritten signature in cursive script that reads "Sue Rademacher". The signature is written in dark ink and is positioned above the printed name.

Sue Rademacher
Mainstreet Communications

DEC 13 2004